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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/605,882	06/29/2000	Pierre Rebreyend	Q59812	7302

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EXAMINER

HOFFMANN, JOHN M

ART UNIT	PAPER NUMBER
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1731

DATE MAILED: 11/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/605,882

Applicant(s)

REBREYEND ET AL.

Examiner

John Hoffmann

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 October 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-16 is/are pending in the application.
- 4a) Of the above claim(s) 8 and 12-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-11, 15-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Newly submitted claim 8 and 12-14 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: These claims are directed to Inventions I and III and/or specie B - which were non-elected by Applicant as per paper 8

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 8 and 12-14 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 16 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

There is no support for the limitation that the gas is particle free. Although there is discussion of the prior art being free of silica - there is no indication that it is free of other particles. Examiner could find no support for the gas being free of all particles. This is deemed to be a prima facie showing that the claims are directed to matter which has no original support. The burden is now on Applicant to demonstrate there is support.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 9-11 and 15-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9, line 3-4 refers to "said target" but there is no prior mention of any target. One of ordinary skill would be confused as to what the claim is referring to. Line 7 refers to "said area"; it is unclear if this refers back to the "area" of line 4, or the "area" of line 6. Or if all of the areas are the same areas.

Claim 16 states that the "gas substantially particle-free". This sentence lacks a verb. It is unclear whether it is "is" or "is not". Given this typographical error it is unclear whether there are further typographical errors. Specifically, page 5, lines 18-19 of the 9 October 2002 response says the claim 16 limits the "source" of the gas and that it is "free of silica particles". It is unclear if claim 16 was suppose to be limited to "silica particles" and to the "source" of the gas.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim 9 is rejected under 35 U.S.C. 102(b) as being anticipated by Fleming 5279633.

Figure 3 and col. 5, lines 39-42. It is deemed that the helium flows goes between the flame and the preform in as much as it flows between Applicant's flame and preform. It is inherent that the power of the flame in that area will be reduced because the helium will dilute the gas and absorb some of the heat.

Claim 9 and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Drouart 6269663.

Drouart discloses the invention of claims 2 and 4 at figure 1, and col. 3 lines 14-21. It is deemed that the gas will reduce the power in as much as applicant's invention does, and the flow of gas is between the flame and the preform in as much as the instant invention is.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10 and 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fleming 5279633 or Drouart.

Fleming doesn't indicate what the flow rate is. It would have been an obvious to use as much or as little gas as necessary to make the Fleming process work. Further, it would have been obvious to make the preform as small or as large as desired. A larger preform needs a corresponding larger flowrate of gas. Furthermore, since the gas will be heated up considerably, and since the volume of a gas is directly proportional to its temperature. The flowrate of the gas is going to vary with location: When the gas is cool, the rate will be lower, but as it is heated up, the rate will increase. It is noted that the helium is relatively cool (otherwise the glass particles will melt in the tube 36.

As to Drouart, see col. 3, line 49 which teaches the range 0-15 l/min. It would have been obvious to use any amount of gas within the range - depending upon the size of the preform (and feeding tube) and how quickly one wanted the preform to grow.

As to Flemming (claim 16) it would have been obvious to have the gas free of particles - prior to the introduction of the silica particles. It is noted that the claims do not indicate when the gas has to be particle free (note page 5 lines 18-19 of the arguments state that it is the "source" which is particle free.) The motivation for the gas being particle free is that is that it would have been obvious to buy substantially pure helium gas - in a tank - because that is the cheapest and the most convenient way to transport helium, And because if the helium gas had particles in it, it could clog up the valves and gauges used with the helium tank.

Likewise for Drouart for claim 16: it would have been obvious to have the source of the carrier gas be particle free - so as to prevent any particles from fouling up the gas lines, valves and gauges.

Response to Arguments

Applicant's arguments filed 9 October 2002 have been fully considered but they are not persuasive.

The arguments regarding claims 1-7 are moot because they have been cancelled by Applicant.

It is argued that since Fleming's glass carries silica particles, it is not a glazing operation. The first definition in Examiner's dictionary defines "glaze" as -- to furnish or

fit with glass--. The dictionary has further definitions for glaze that are consistent with the Fleming method. Examiner can find nothing (for example, a definition) in the present Application that would indicate that Fleming's coating step is a glazing step. Therefore the rejection will be maintained. The fact that Applicant discloses glazing without feeding material is irrelevant because such is not presently a claimed limitation. Likewise the Drouart method is deemed to be a glazing method because glass is being furnished to the preform.

It is argued that new claim 16 has the source of the gas substantially free of silica particles. See the prior art rejection for the manner in which the claim is met.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

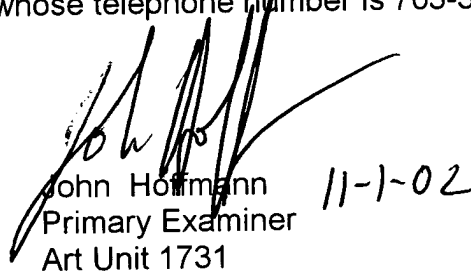
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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Hoffmann whose telephone number is 703-308-0469. The examiner can normally be reached on Monday through Friday, 7:00- 3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steve Griffin can be reached on 703-308-1164. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7115 for regular communications and 703-305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.


John Hoffmann
Primary Examiner
Art Unit 1731
11-1-02

jmh
November 1, 2002